No. 88-6438

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

MAURICE J. KEENAN, Petitioner

v.

THE STATE OF CALIFORNIA, Respondent

- - - - - - - - - - -

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF CALIFORNIA

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether this Court should review the California Supreme Court's determination that petitioner's death penalty verdict was not coerced under the facts and circumstances of this case by the trial court's comments and instructions to the jury after it had commenced deliberations.

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MAURICE J. KEENAN,

Petitioner,

vs.

THE STATE OF CALIFORNIA

Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of California

RESPONSE IN OPPOSITION TO PETITION
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OPINION BELOW

The opinion below is the decision of the Supreme Court of California reported in People v. Keenan, 46 Cal.3d 478, 758 P.2d 1081, 250 Cal.Rptr. 550, mod. 46 Cal.3d 1284a (1988), which affirmed petitioner's sentence of death. A copy of the opinion and modification is attached to the Petition.

JURISDICTION

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The applicable provisions are set forth at page two of the Petition.

STATEMENT OF THE CASE

On October 11, 1979, the district attorney for the City and County of San Francisco filed an information charging petitioner with murder (Cal. Pen. Code § 187),[1] burglary (§ 459), two counts of attempted robbery (§§ 211, 664), robbery (§ 211), possession of a sawed-off shotgun (§ 12020), and possession of a concealable weapon by a convicted felon (§ 12021). The district attorney also alleged the special circumstances that petitioner committed the murder during the commission or attempted commission of robbery (§ 190.2(a)(17)(i)) and burglary (§ 190.2(a)(17)(vii)), rendering him eligible for the death penalty. A codefendant, Robert Kelly, was charged with the same offenses except that no special circumstances were alleged against him and he was not charged with being a convicted felon in possession of a firearm. C.T. 1-5.[2]

On November 30, 1982, a jury found petitioner guilty as charged of all counts and found true the special circumstances allegations. C.T. 1065-77. Codefendant Kelly was found guilty of all charges the next day. C.T. 1079.

On December 13, 1982, the jury determined that the death penalty should be imposed against petitioner. C.T. 1179-81, 1199-1200. On January 21, 1983, the trial court denied petitioner's automatic motion under section 190.4 for modification of the jury's verdict and pronounced judgment of death. C.T. 1246-53, 1337-42.

On August 25, 1988, the California Supreme Court affirmed the judgment in all respects. On October 31, 1988, the court modified its opinion, without affecting the result, and denied petitioner's request for rehearing.

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1. All further statutory references are to the California Penal Code unless otherwise noted.

2. "C.T." refers to the Clerk's Transcript on appeal to the California Supreme Court.

STATEMENT OF FACTS

A. Facts Relating to the Crimes

Petitioner does not dispute the evidence to support his convictions. We draw the following brief summary from the state supreme court's accurate recitation of the facts.

On July 8, 1979, petitioner and codefendant Kelly went to a San Francisco art gallery owned by Robert Opel. Opel was known to sell illegal drugs at his gallery. Anthony Rogers and Camille O'Grady, friends of Opel, were also present when petitioner and Kelly arrived at the gallery.

Shortly after entering the gallery, petitioner brandished a handgun and Kelly a sawed-off shotgun. Petitioner announced, "[T]his is for or from Dana." Petitioner and Kelly repeatedly demanded drugs or money. Opel insisted that he had nothing and that the intruders should leave.

Kelly took the witnesses, Rogers and O'Grady, to a separate room where he took some cash and personal property from them. Rogers and O'Grady could still hear petitioner and Opel arguing. Petitioner said, "I'll blow your head off." Through a doorway, O'Grady saw petitioner fire one shot into the ceiling. This was followed by a second shot, after which the arguing continued, and then a third shot which was followed immediately by the sound of a falling body.

Kelly tied up Rogers and O'Grady, disobeying petitioner's order to "[k]ill them both," and the robbers fled. Opel had been shot once in the head at close range with a small caliber weapon, and he died from this wound.

On July 10, 1979, the police located a Dana Challman, who named petitioner as a suspect in the murder. The police apprehended petitioner, Kelly and petitioner's wife at the San Francisco International airport later that same day. The suspects' luggage was seized and searched pursuant to a warrant. It contained the sawed-off shotgun brandished by Kelly and the handgun which fired the fatal shot. Eyewitnesses Rogers and

O'Grady identified petitioner and Kelly from a photo lineup shown to them three days after the murder and at trial.

Petitioner presented no evidence in his defense. Codefendant Kelly testified in his own defense and admitted his participation, explaining that he took part because he wanted money and was afraid of petitioner. Kelly named petitioner as the actual killer of Opel.

At the penalty phase, the prosecution presented evidence that petitioner had committed other violent crimes including a 1977 armed robbery, a 1979 burglary and witness intimidation, a 1980 assault on a jail inmate, and a shooting on July 7, 1979 (the day before the murder), in which petitioner abducted an acquaintance, shot him in the back, and left him for dead. The victim of that shooting survived.

Petitioner presented evidence at the penalty phase of his difficult childhood and family life. He also presented evidence that he suffered from amphetamine dependency and a paranoid personality disorder. See People v. Keenan, 46 Cal.3d at 490-98, 758 P.2d at 1087-92, 250 Cal.Rptr. at 557-62.

B. Facts Relating to the Jury Issue Raised in the Petition

Petitioner's question presented for certiorari concerns alleged jury coercion caused by the trial court's comments during penalty deliberations. We set forth the state court's accurate recitation of the facts relating to this issue.

> Defendant urges that remarks by the court to the jury during its penalty deliberations were fatally coercive. In defendant's view the court, having reason to suspect the jurors were "eleven to one for death," told them it expected and desired a quick verdict and improperly implied that the alternative was an "investigation" of the minority juror. Examined in context, the record shows the court responded correctly to indications of serious juror misunderstanding or

misconduct and that its remarks were not coercive. A resume of the facts is required.

Penalty deliberations commenced on Thursday, December 9, 1982, and the jury was sequestered on Thursday evening. During deliberations on Friday afternoon, the jury foreman delivered a note to the court which stated: "One person doesn't remember that during the jury selection he said we could vote for the death penalty." The court summoned counsel and advised them of its initial intention to "investigate" the possibility that a juror had misrepresented on voir dire his ability to follow the law. Defense counsel, however, persuaded the court simply to reinstruct the entire jury on its sentencing powers and duties.

The jury was then summoned for a supplemental charge. The court prefaced its instructions by remarking that perhaps they "will resolve any problem that you have, and perhaps will answer any questions that you have, ..." The jurors were first admonished (1) that they should reach a verdict "if you can do so"; (2) that "[w]hile each of you must decide the case for yourself and not merely acquiesce in the conclusions of your fellow jurors," each juror must examine the issues with "candor[,] frankness[,] and . . . a proper regard for the opinions of your fellow jurors"; and (3) that they were obliged, "after full consideration of the evidence and the law, to agree upon . . . a verdict if you can do so without violating your conscience and your individual judgment."

At this point, the court also specifically advised as follows: "Of course, by pointing out to you the desirability of your reaching a verdict, I am not suggesting to any of you that you surrender your honest convictions as to what the evidence in this case has disclosed and of the weight and effect of the evidence

in the case." Finally, the court restated that the jury "may" impose the death penalty if persuaded that aggravating circumstances outweighed mitigating, and "shall" impose life without parole if convinced that mitigating circumstances outweighed aggravating. The jury was ordered to resume deliberations, and the court asked to be advised by note "if there is any problem or difficulty" with its instructions.

Later that same afternoon the court, in the presence of both counsel, received a second note from the jury foreman. The note declared: "Your Honor, we have a juror who cannot morally vote for the death penalty." The court denied defense counsel's motion for mistrial, made on grounds the note indicated a "hung" jury. In the court's view, it was now "duty bound to investigate" whether "a juror . . . had misled us on voir dire, ..."

With defense counsel's full agreement, the court decided to release the jury for the weekend and defer the investigation until Monday "in order," in counsel's words, that "the jurors can be free from the very intense pressure which exists in the jury room at this moment." Counsel also agreed that the court would "explain" to the jurors "what we're going to do" and admonish them "to search their conscience[s]" over the weekend about their duties to be fair and follow the law.

About 4:30 p.m., the jury was recalled to the courtroom. The court announced that, based on the foreman's note, "it appears to me that the jury has a problem." "I am required to investigate this," said the court, and to question both the foreman and "the one or more jurors who may be having difficulty in reaching a verdict. . . . [¶] I may have to permit the attorneys to question one or more of the jurors."

The court declared it had thought "the jury would have a verdict by this afternoon." Under the circumstances, however, the court offered the jurors the option of being released for the weekend "since I assume . . . you've been working hard all day and . . . would like, perhaps, to be able to go home and spend the weekend with your families and take care of your own personal business." Over the weekend, each juror should "search your conscience . . . and recall your oath . . . and your duty and responsibility to follow the law and judge the case . . . in accordance with your honest convictions as to what you believe is the appropriate penalty in this case." If the jury was released, said the court, "on Monday morning, I can question the foreman, question several of the jurors, if there is a problem, and then make a determination . . . whether or not one or more of the jurors are refusing to adhere to the law and the evidence, and if that is the situation, then I'll have to make a determination as to how to proceed."

At this point, the foreman, Mr. Piazza, attempted to interrupt. The court admonished him not to reveal the jurors' thoughts of "what's going on" in deliberations. Rather, said the court, "I probably, Mr. Piazza, will question you on Monday morning individually with the attorneys present, and then I may have to question each juror individually, ..."

The foreman responded that a weekend release would be a "fine gesture," and that "by searching our conscience, . . . we should have a verdict come Monday." The court responded, "Good. Well, I'm glad to hear you say that. I appreciate that."

Next, the court delivered a long commentary, explaining why the jury had been sequestered the previous night despite the substantial imposition, and

admonishing the jurors "for God's sake" not to do anything over the weekend "that would in anyway [sic] influence you one way or the other." Jurors should return at 9:15 Monday morning, said the court, but should not resume deliberations until advised to do so. Meantime, the court would "probably talk to your foreman" and "may talk to all of you individually," depending on what facts developed.

After the jurors had left the courtroom, defense counsel took issue with the court's statement "to the effect the Court would be pleased with the jury reaching a verdict on Monday." The court responded that it would try on Monday to correct any such misimpression, "because I don't feel that way [at] all." Counsel raised no objection to the court's remarks that it might have to "investigate" dissident jurors.

When the jurors returned on the morning of Monday, December 13, they were diverted to the jury assembly room and admonished again not to discuss the case. After interchange between court and counsel, the jury foreman was brought in for questioning. The court cautioned him not to reveal the details of deliberations, the numerical split, or the prevailing view within the jury. It then asked if any juror had stated he or she would not follow the law; "[b]y that I mean has a juror indicated that they [sic] would refuse to vote for the death penalty in every case or that they would vote for death and never vote for life imprisonment?" The foreman responded, "No."

Thereupon, the following colloquy occurred: "[¶] Q. [By the Court] All right. Based upon what has occurred, is it your opinion that a juror is refusing to follow the law? [¶] A. I can't answer that without a little statement, your Honor." [¶] Q. All right,

explain. [¶] A. It was -- there was a little confusion of the jurors, and I am talking plural, as to the instructions of the judge the day of -- the day we were challenged. And these jurors did not recall hearing that they may have to vote for the death penalty. And the statement I got this morning was, it has been resolved. The weekend that you gave us, your Honor, I believe cleared everybody's minds or whatever. So, that is where we stand now, your Honor."

The court denied defendant's renewed motion for mistrial. Defense counsel complained about the foreman's apparent reference to a morning discussion between jurors in violation of the court's admonition. The foreman was returned to the courtroom and again warned not to reveal the details of voting or views within the jury. The following exchange then took place: "[¶] Q. [By the Court] But you have made that statement that the problem, you thought, was resolved. [¶] A. No, sir. [¶] Q. Okay. [¶] A. Can I clarify that statement? [¶] Q. Yes. Without telling me -- don't identify anybody. [¶] A. No. There was an apology. 'I needed the weekend.' And that was it. [¶] Q. That was the extent? [¶] A. That was the extent of the discussion with the jurors, okay, plural, again. [¶] Q. The individual who made that apology just approached you without any question from you? [¶] A. Yes, sir."

The court ruled that it need not investigate further and would allow the jury to continue its deliberations. After recalling the jury to the courtroom, the court readministered the previously given instructions on general obligations of a juror. These again stressed that jurors must follow the law, discuss issues frankly, respect and consider the views

of other panelists, and reach a verdict if possible without violation of conscience or individual judgment.

The court then stated: "Ladies and gentlemen of the jury, one further comment before you return to the jury room to continue your deliberations. So that there is no misunderstanding in this particular case, the Court has not intended by anything that it may have said or done to intimate or suggest to you what you should find to be the fact on any question submitted to you or which penalty the Court believes is appropriate in this particular case. [¶] If anything I have said or done has seemed to so indicate, you must disregard it and form your own opinion of the evidence."

The jury recommenced deliberations. Within an hour, it announced a death verdict.

People v. Keenan, 46 Cal.3d at 527-30, 758 P.2d at 1112-15, 250 Cal.Rptr. at 582-84.

Petitioner urges that the court's comments should be examined in light of the events that transpired in the jury room on the afternoon of Friday, December 10. These facts came to light -- at least to a degree -- at petitioner's post-verdict motion for new trial. Again, we quote from the state court opinion.

> Subsequent to the penalty verdict, defendant moved for a new trial on grounds among others, that Juror Walker had committed prejudicial misconduct ([Cal.] Code Civ. Proc., § 657, subd. 2) by his diatribe against another panelist. The court dismissed the claim of misconduct and denied the new trial motion. Defendant urges the claim of misconduct received inadequate investigation. We agree with the trial court, however, that the conduct asserted, even had it been proven, was insufficient to impeach the penalty verdict. We explain in further detail.

The motion for new trial included the declaration of defense investigator Cathy Kornblith. Kornblith declared Juror Walker had told her that, on the afternoon of Friday, December 10, he lost his temper in the course of deliberations. According to Kornblith, Walker said he pointed a finger at Juror Zadonsky, an elderly woman who was the lone holdout against death, and said, "If you make this all for nothing, if you say we sat here for nothing, I'll kill you and there'll be another defendant out there -- it'll be me."

In a January 14, 1983, hearing on the new trial motion, defense counsel said he had subpoenaed Walker, who refused to sign a declaration but had agreed to testify in open court and was present. The court opined that a juror could not be called to impeach the verdict, that the "threat" was simply a display of temper during deliberations, and that the "mental processes" of jurors could not be investigated. However, the court granted a one-week continuance to enable the defense to gather further evidence.

Subsequently, the defense submitted further declarations by the jury foreman, Piazza, by Kornblith, and by counsel. Piazza stated that Walker repeatedly shouted at Juror Zadonsky, the lone holdout, during the deliberations, and at one point shouted she should vote for death. On the afternoon of December 10, Walker became angry and shouted something at Zadonsky. Piazza could not recall the "specific words" used. Zadonsky began crying and shaking and went to the bathroom "where I believe she vomited."

Piazza said he expressed the view that it would not be right to vote while Zadonsky was in this emotional and physical state. Instead, two notes were sent to the judge stating that a juror was having a problem. After the subsequent weekend recess ordered

by the court, Piazza declared, Zadonsky approached him on Monday morning and "apologized for having been so emotional on Friday afternoon."

Kornblith declared that in subsequent conversations with Walker, he admitted again he had threatened Zadonsky's life, agreed to tell "the whole story" in court, but refused to sign a "confining" written statement. Counsel's declaration recounted Walker's numerous efforts thereafter to avoid contact with him.

The prosecution filed a counter declaration by Walker. In this declaration, Walker denied any death threat. He further claimed he had not engaged in repetitive shouting at Zadonsky, and had never shouted that she should vote for death. Walker stated that on a single occasion, during the afternoon of Friday, December 10, he rose from his chair and said to Zadonsky, "I don't think your are as stupid as you are acting."

At a hearing on January 21, counsel stated that he had contacted Zadonsky, who was unwilling to sign a declaration "and simply does not want to be involved in this any more. . . ." The court again denied a defense request that Walker be compelled to give live testimony. It reiterated that "Mr. Walker cannot be called as a witness at this hearing, nor can any other juror, in my opinion."

The court admitted into evidence the declarations of Piazza and Walker, accepted counsel's declaration for the limited purpose of showing defense efforts to contact Walker, and excluded Kornblith's declarations as hearsay. It then denied the new trial motion. The court found "insufficient evidence" of misconduct warranting a new trial. Defendant, said the court, was improperly attempting to delve into the details of

deliberations and the jurors' "mental processes." Moreover, "[i]n my opinion, the alleged statement is not of a character that it would likely have influenced the verdict." Heated debate is expected of jurors, said the court, and to call a juror as a witness to impeach the verdict "touches on the integrity of the jury system" (citing Linhart v. Nelson (1976) 18 Cal.3d 641 [134 Cal.Rptr. 813, 557 P.2d 104]).

Defendant admits the current record, stripped of inadmissible hearsay, fails to establish that Walker specifically threatened to kill Zadonsky. People v. Keenan, 46 Cal.3d at 538-40, 758 P.2d at 1120-21, 250 Cal.Rptr. at 590-91.

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REASONS FOR DENYING THE PETITION

THE CALIFORNIA SUPREME COURT APPLIED THE APPROPRIATE FEDERAL STANDARD AND CORRECTLY DETERMINED, UNDER THE FACTS OF THIS CASE, THAT THE JURY WAS NOT COERCED.

In Lowenfield v. Phelps, ___ U.S. ___, 98 L.Ed.2d 568, 108 Sup.Ct. 546 (1988), this Court considered whether an Allen instruction[3] may be given to a capital penalty phase jury. The court first observed that the contention the jury was coerced required that the supplemental charge be considered "'in its context and under all the circumstances.'" Id. at ___, 98 L.Ed.2d at 576-77, 108 Sup.Ct. at 550. It then held on the facts of the case that

> the combination of the polling of the jury and the supplemental instruction was not "coercive" in such a way as to deny petitioner any constitutional right. By so holding we do not mean to be understood as saying other combinations of supplemental charges and polling might not require a different conclusion. Any criminal defendant, and especially any capital defendant, being tried by a jury is entitled to the uncoerced verdict of that body. For the reasons stated we hold there was no coercion here.

Id. at ___, 98 L.Ed.2d at 579, 108 Sup.Ct. at 552. Petitioner argues that this Court should grant the petition to decide what he describes as "[t]he important issue reserved in Lowenfield v. Phelps." Pet. at 9. He claims that the facts of this case are such that the verdict was coerced. He also contends that the petition should be granted because "[t]here is a conflict in the state courts," Pet. at 12, and because "[t]he decision below is wrong." Pet. at 16.

In answering these contentions, we briefly set forth the facts in Lowenfield, as they are instructive for purposes of comparison to petitioner's case. There, after about one day of

3. See Allen v. United States, 164 U.S. 492 (1896).

sentencing deliberations, the jury announced it was deadlocked. The trial judge conducted a written poll of the jurors in which eight jurors indicated they believed further deliberations would be helpful. After this poll, the jurors were returned to the jury room. The defendant moved for a mistrial. His motion was denied, and the jurors were brought back into court for further instructions. When they returned, they gave the judge a note stating that some had been confused by his written question. The court then conducted an oral poll, asking, "Do you feel that any further deliberations will enable you to arrive at a verdict?" Eleven jurors answered yes, one answered no. The trial judge then gave a supplemental charge in which he reminded them that a sentence of life imprisonment without parole would be imposed if they could not agree on a verdict. He also instructed,

> Each of you must decide the case for yourself but only after discussion and impartial consideration of the case with your fellow jurors. You are not advocates for one side or the other. Do not hesitate to reexamine your own views and to change your opinion if you are convinced you are wrong but do not surrender your honest belief as to the weight and effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning a verdict.

The jury returned a death verdict 30 minutes after this charge. Lowenfield v. Phelps at ___, 98 L.Ed.2d at 575-76, 108 Sup.Ct. at 549.

As noted above, this Court held that the verdict was not coerced by the trial judge's comments and instructions. In particular, the Court found that the fact Louisiana law automatically imposes a life sentence if the jury deadlocks did not render the instructions coercive because the state has "a strong interest in having the jury 'express the conscience of the community on the ultimate question of life or death'", and the trial judge can insist on further deliberations toward this end. Id. at ___, 98 L.Ed.2d at 577-78, 108 Sup.Ct. at 551. The Court

noted that the charge did not speak specifically to minority jurors, as permitted by Allen, and found that the judge's polls were not coercive because they did not inquire into the numerical division of the jurors on the question of penalty. Lowenfield v. Phelps at ___, 98 L.Ed.2d at 577-79, 108 Sup.Ct. at 551-52.

In the present case, it is apparent that the California Supreme Court examined petitioner's claim of jury coercion "in its context and under all the circumstances" in rejecting his contention. The state court was aware of this Court's decision in Lowenfield and cited to it in deciding the issue. The court found that the trial judge's supplemental charge was similar to that approved in Lowenfield. People v. Keenan, 46 Cal.3d at 533 n. 27, 758 P.2d at 1117 n. 27, 250 Cal.Rptr. at 586 n. 27. Here, as in Lowenfield, the supplemental charge did not single out minority jurors. Here, as in Lowenfield, the trial court did not seek to ascertain the actual split of the jurors. See People v. Keenan, 46 Cal.3d at 532-33 n. 26, 758 P.2d at 116 n. 26, 550 Cal.Rptr. at 586 n. 26.[4] Furthermore, and perhaps most significant, unlike Lowenfield, petitioner's jury was not told that a life sentence would be imposed if the jurors could not agree. California law is different; it permits a retrial of the penalty phase in the case of a deadlocked jury. § 190.4(b). As we read Lowenfield, the fact that the jury was told about the mandatory life sentence was of foremost importance in the claim that the verdict was coerced. See Lowenfield v. Phelps, ___ U.S. at ___, 98 L.Ed.2d at 577-78, 108 Sup.Ct. at 551. Yet that factor was altogether absent in the present case.

Naturally, petitioner has a different view whether the trial judge's comments were coercive in that they were directed

4. Petitioner suggests that since, through hindsight, we now know the jury was divided 11 to 1 for death at the time of the charge, then it must be concluded the supplemental charge was coercive. If adopted, this argument would effectively overrule Allen and Lowenfield. No trial judge would dare to give such a charge if he or she knew that a verdict could be set aside upon post-trial investigation which disclosed the split of the jury at the time the charge was given. For this same reason, petitioner's reliance on the "facts" developed at the hearing on the new trial motion is inappropriate.

to minority jurors or made with knowledge that the jury stood 11 to 1 for death. As with any fact-bound record, he is able to point to certain of the trial judge's remarks in support of his view. Specifically, he narrowly focusses on the trial judge's comments that he might question "the one or more jurors who may be having difficulty in reaching a verdict" and that he was "glad" to hear that the foreman thought a verdict could be reached on Monday to argue that (1) the judge's comments were improperly directed to minority jurors, and (2) the judge in effect stated that the jury had to reach a verdict. Pet. at 10. But this misses the point as to whether the petition should be granted. The state supreme court took into consideration the entire record and all of the judge's comments. It noted the judge's numerous other comments that the jury was not required to reach a verdict and his supplemental charge on Monday, before any further deliberations had taken place, that he had not intended any of his previous comments to be construed otherwise. Construing them as a whole, it found no coercion. People v. Keenan, 46 Cal.3d at 532-35, 758 P.2d at 1116-18, 250 Cal.Rptr. at 585-87. No state court error occurred; no federal standard went ignored; no novel principle of law was presented.

Finally, we briefly discuss petitioner's contention that there is a split of state court authority. He cites to two pre-Lowenfield state court decisions which concluded, under the unique facts and circumstances of those cases, that the verdicts therein were coerced. Pet. at 12-14. Given that each such case is necessarily different, we fail to see the split in authority.

Lowenfield involved an important legal question: may an Allen instruction be given to a deadlocked penalty jury? It answered that question in the affirmative, but cautioned that each case must be decided on its own facts. Applying this general principle, this is precisely what the California Supreme Court did in this case. No purpose would be served in granting the petition.

CONCLUSION

For the foregoing reasons, respondent respectfully submits that the petition for writ of certiorari should be denied.

Respectfully submitted,

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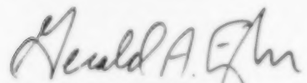

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CERTIFICATE OF SERVICE BY MAIL

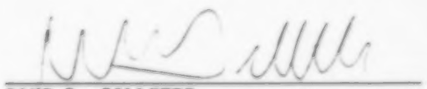
MAURICE J. KEENAN,	)
Petitioner,	)
v.	)
STATE OF CALIFORNIA,	)
Respondent.	)

DANE R. GILLETTE, a member of the Bar of the Supreme Court of the United States, states:

That his business address is 350 McAllister Street, Room 6000, in the City and County of San Francisco, State of California; that on February 27, 1989, he served a true copy of the attached Response in Opposition to Petition for Writ of Certiorari in the above-entitled matter on counsel for petitioner by placing same in envelope addressed as follows:

HARVEY R. ZALL
State Public Defender
JOEL KIRSHENBAUM
Deputy State Public Defender
1390 Market Street, Suite 425
San Francisco, California 94102

Said envelope was then sealed and deposited in the United States Mail at San Francisco, California, with the postage thereon fully prepaid.



DANE R. GILLETTE
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